

PALGRAVE STUDIES IN RELIGION,  
POLITICS, AND POLICY

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# RELIGIOUS LIBERTY IN A LOCKEAN SOCIETY

Elissa B. Alzate



# Palgrave Studies in Religion, Politics, and Policy

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A generation ago, many social scientists regarded religion as an anachronism, whose social, economic, and political importance would inevitably wane and disappear in the face of the inexorable forces of modernity. Of course, nothing of the sort has occurred; indeed, the public role of religion is resurgent in US domestic politics, in other nations, and in the international arena. Today, religion is widely acknowledged to be a key variable in candidate nominations, platforms, and elections; it is recognized as a major influence on domestic and foreign policies. National religious movements as diverse as the Christian Right in the United States and the Taliban in Afghanistan are important factors in the internal politics of particular nations. Moreover, such transnational religious actors as Al-Qaida, Falun Gong, and the Vatican have had important effects on the politics and policies of nations around the world.

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# Religious Liberty in a Lockean Society

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*To Dylan and Ingrid, my inspiration and my light  
my love for you knows no bounds*

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## CHAPTER 1

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# Balancing Religious Liberty in the United States

**Abstract** Alzate provides a unique approach to assessing religious liberty in the United States by applying John Locke's political theory. The United States has struggled with balancing religious liberty against both government authority and the rights of other citizens in society, a struggle which culminated in the Religious Freedom Restoration Act (RFRA). This chapter sets up three cases—the government employee, the employer, and the small business owner—that demonstrate the difficulty in identifying the proper extent and limits of religious liberty. Alzate argues that Locke's theory of religious liberty provides clear criteria for assessing the concept. Given the indebtedness of American political ideas on Locke's political theory, these criteria are both relevant and necessary.

**Keywords** John Locke · Religious liberty · Freedom of religion  
First amendment · Free exercise · American founders  
RFRA · Liberalism · Individual rights · Kim Davis · Hobby Lobby  
Arlene's Flowers

Religious liberty is a divisive issue in the United States and one of ongoing importance politically. It has become more salient in public awareness over the last couple of decades, due in part to the passing of the federal Religious Freedom Restoration Act (RFRA) and several subsequent state RFRA laws. RFRA legislation aims at protecting religious liberty at a higher level than most other rights and exempting people,

on grounds of religious belief or exercise, from laws that do not speak to religion and are of general applicability. Debates over religious freedom in general, and RFRA laws in particular, tend to frame the issue as black or white, making it seem as though there is an ongoing war between religious believers and those who seek a complete separation between church and state. Framing religious liberty in such terms forces a choice between one of only two alternatives—either politics remains completely separate from and supersedes religion or our political system becomes a theocracy. Those who oppose RFRA protections tend to be secular-minded, viewing the proper relationship between religion and politics as one of complete separation. Those who advocate for more robust protections for religious liberty than for other rights and freedoms often see themselves as religious believers under attack from an increasingly secular society.

In reality, the right of religious liberty is much more nuanced than being wholly religious or wholly secular. Very few political issues have such black and white answers. All of our rights, freedoms, and political objectives exist in a delicate balance with the others, an increase of one resulting in the decrease of another. Moreover, increasing protection of a right for one individual often results in decreased protection of another individual's rights. Achieving balance among diverse objectives is the delicate but indispensable task of politics, without which there is no public order or political society. As one respected scholar put it, “Any society requires some form of constraint or repression to be a society.”<sup>1</sup> What she means is that the benefits and protections we receive from participating in society can only be provided by restricting certain rights and privileges of its members. In this case, the question is, where is the balance between religious liberty and other rights and political objectives and between the religious liberty of one person and that of another? In order to answer this question, we first need criteria for knowing how to find such a balance. An examination of the concept of religious liberty helps us understand what is at stake in these debates and discover any potential alternatives to the black–white, religious–secular dichotomy.

This book examines religious liberty according to the political theory of John Locke, seventeenth-century political philosopher and progenitor of liberalism. By “liberalism,” I refer not to a progressive approach to politics such as that adopted by the Democratic Party in the United States but, rather, in the broader philosophical sense where political authority is based on the consent of the governed and exists to protect

individual rights and freedoms with limited governmental authority. Locke proposed a view of the political-religious relationship that acknowledges the need for balance. Weighing religious liberty too heavily against other goals inhibits government's ability to fulfill its purpose to provide for the public good and infringes upon the rights of others. Not weighing it heavily enough destroys freedom itself and undermines our liberal, rights-based system. A thorough examination of this argument reveals that RFRA laws disturb the delicate balance existing between our various rights by placing religious liberty hierarchically above the others. Such legislation furthermore endangers the fundamental rule of law by allowing for exemptions to neutral, generally applicable laws on an individual case-by-case basis.

## RELIGIOUS LIBERTY IN THE UNITED STATES

One might be surprised at the amount of conflict generated by issues of religious freedom among political leaders as well as in society as a whole, thinking that the First Amendment to the Constitution should have resolved any difficult questions regarding religion. The First Amendment's provision on religion states, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." It thereby provides protection for religious freedom in two ways, which have come to be known in legal jurisprudence as the Establishment Clause and the Free Exercise Clause. The Establishment Clause, at a minimum, prohibits government from establishing an official national church and has been interpreted by many as further requiring government to remain neutral in religious matters and treat all religions equally. The Free Exercise Clause prohibits government from interfering with or restricting individuals' religious beliefs or decisions of worship. Between the two clauses, one might think that American society has a shared understanding of the meaning of religious liberty and that the protections for religious freedom are clearly delineated. Contrary to this expectation, matters of religious freedom continually arise in American society and have caused dissension since the First Amendment was newly printed. Moreover, such issues prove difficult to resolve, not easily answered by a quick read of the Amendment's two clauses.

The three following examples demonstrate some of the complications raised just in recent years. These examples were chosen to highlight the key political dimensions of religious liberty: the direct actions